

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION TO DETERMINE)	
WHETHER AN ADEQUATE MEANS FOR)	CASE NO. 90-290
DELIVERY OF GAS IS AVAILABLE TO)	
KEN-GAS OF KENTUCKY, INC.)	

O R D E R

Ken-Gas of Kentucky, Inc. ("Ken-Gas") is engaged in the business of furnishing natural gas to the public and is a utility subject to the jurisdiction of this Commission pursuant to KRS 278.040. KRS 278.030(2) requires a utility to furnish adequate, efficient, and reasonable service. KRS 278.010(12) defines adequate service as:

[H]aving sufficient capacity to meet the maximum estimated requirements of the customer to be served . . . and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service.

William Nickens wrote a letter to the Commission dated August 17, 1990 which requested Commission assistance regarding the unauthorized and illegal use of his pipeline by Ken-Gas. (See Attachment A.) Mr. Nickens had previously contacted Commission Staff July 2, 1990 regarding the failure of Ken-Gas to pay transportation costs for gas Ken-Gas has transported through his five-mile pipeline in Cumberland County since 1989. Due to Ken-Gas's failure to pay for gas transported through his pipeline

and Ken-Gas's failure to otherwise cease use of the pipeline, Mr. Nickens has indicated that he may attempt to stop Ken-Gas's use of his pipeline through court litigation or shut the pipeline down.

Ken-Gas was granted a Certificate of Convenience and Necessity on May 22, 1987 by the Commission in Case No. 9586¹ to construct a natural gas distribution system in Burkesville, Cumberland County, Kentucky ("City of Burkesville"). Subsequently, the Commission established Case No. 9987,² a show cause proceeding, on August 7, 1987 since Ken-Gas had failed to comply with certain requirements of the final Order in Case No. 9586 prior to beginning construction. In Case No. 9987, Ken-Gas testified that its source of gas supply would be provided through a 21-mile transmission pipeline, beginning at a tap on an interstate pipeline in Metcalfe County, Kentucky, owned by Texas Eastern Transmission Company ("Texas Eastern"), southeast towards the City of Burkesville, interconnecting with Ken-Gas approximately three miles outside the City of Burkesville.

In Case No. 9987, Ken-Gas represented that WEDCO, Inc. ("WEDCO") owned and operated most of the 21-mile transmission pipeline, except for five miles beginning at the Texas Eastern tap which was owned by Kentucky Energy Transmission, Inc. ("K.E.T."). According to Ken Turner, owner and operator of Ken-Gas, K.E.T. is

¹ Case No. 9586, Application by Ken-Gas of Kentucky, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a Natural Gas System, Approval of Financing and Construction Costs, and Approval of Applicable Rates.

² Case No. 9987, Failure of Ken-Gas of Kentucky, Inc. to Comply With a Commission Order.

owned by his sons and daughters. K.E.T. was established to transport gas to Ken-Gas. However, K.E.T. has never been paid for any gas delivered through its pipeline since Ken-Gas began operations in December 1988.

In February 1989, Ken-Gas submitted revised information to Staff which included a map of the 21-mile transmission pipeline. According to this map, K.E.T. owns all of the pipeline except for the five-mile "Nickens line," which interconnects directly with Ken-Gas's system. Upon inquiry from Staff regarding the "Nickens line," Ken-Gas stated that it had been unable to contact the owner and assumed the pipeline had been abandoned.

Mr. Nickens' August 17, 1990 letter requesting Commission assistance included copies of previous correspondence with Ken-Gas regarding unauthorized use of his pipeline. Included was a copy of a June 30, 1989 Agreement, attached hereto and marked Attachment B, signed by WEDCO, Mr. Nickens, Ken-Gas, and K.E.T. This Agreement includes a stipulation that prior to June 30, 1989 Ken-Gas "made unauthorized use of the WEDCO easement and the Nickens line and easements." It was also stipulated that WEDCO owns 4,000 feet of pipeline easement in Metcalfe County and that Mr. Nickens owns five miles of pipeline in Cumberland County. The terms and conditions of this Agreement appear to have been contingent upon WEDCO and Ken-Gas entering into a contract regarding the use of Mr. Nickens' pipeline. No such contract between WEDCO and Ken-Gas has ever been signed.

In response to Staff's July 12, 1990 request for information and a response to Mr. Nickens' assertions, Ken-Gas submitted

information, attached hereto and marked Attachment C, stating that it considered the June 30, 1989 Agreement null and void since Ken-Gas and WEDCO did not enter into a contract. Ken-Gas also stated that it had been granted oral permission to tie-in to Mr. Nickens' pipeline by WEDCO and Walton Haddix (who worked for Ken-Gas at that time). Ken-Gas stated it had tried to contact Mr. Nickens regarding his pipeline several times but was unable to reach him.

On September 4, 1990, Ken-Gas filed additional information, attached hereto and marked Attachment D, stating that it does not acknowledge any unauthorized use of Mr. Nickens' pipeline. Ken-Gas also does not believe that Mr. Nickens or WEDCO controls any easements critical to the operation of the K.E.T. transmission pipeline between the Texas Eastern tap and Ken-Gas's system. Ken-Gas also stated that WEDCO does not own any easements pertaining to any of the K.E.T. pipeline.

Based upon the information available, the Commission finds that an investigative proceeding should be established pursuant to KRS 278.250 to determine whether Ken-Gas's access to a supply of gas is threatened and to allow Ken-Gas to demonstrate that an adequate and reliable source of gas can be delivered to the City of Burkesville for the 1990-91 heating season.

The Commission finds that since Burkesville Gas Company, Inc. ("Burkesville Gas") has pending with the Commission an application

for approval of the transfer and sale of Ken-Gas,³ it is a necessary party to this investigation.

IT IS THEREFORE ORDERED that:

1. Ken-Gas shall submit to the Commission no later than October 12, 1990 the following information: 1) the amount (Mcf) of gas by month that has been delivered through Mr. Nickens' pipeline to Ken-Gas during the period November 1988 through September 1990; 2) what action Ken-Gas will take to maintain a gas supply to the City of Burkesville if Mr. Nickens shuts his pipeline down; 3) a description of when and the nature of Ken-Gas's efforts during the period January 1986 through July 1990 to discuss with Mr. Nickens the use of his pipeline.

2. The records in Case No. 9586 and Case No. 9987 shall be incorporated herein by reference.

3. Burkesville Gas is hereby made a party to this proceeding.

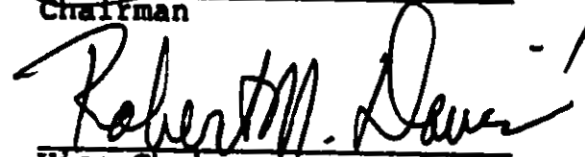
4. Ken-Gas shall appear on October 22, 1990, at 1:30 p.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of demonstrating that it has an adequate and reliable supply of gas to the City of Burkesville for the 1990-91 heating season.


³ Case No. 90-294, The Application of Burkesville Gas Company, Inc. for Approval of the Transfer and Sale of Ken-Gas of Kentucky, Inc. and Application of Burkesville Gas Company, Inc. for an Order Authorizing the Creation and Issuance of \$1,300,000.00 of Long Term Instruments of Indebtedness.

Done at Frankfort, Kentucky, this 3rd day of October, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

TODAY'S DATE 8-17-90 TIME 1:39

NO. OF
PAGES 1

TO Ky. Public Service Comm.
LOCATION Frankfort, Ky.
FAX NUMBER 1-502-564-7279
TELEPHONE NUMBER

FROM Bill Nickens
LOCATION McKinney
FAX NUMBER 214-548-9000
TELEPHONE NUMBER

COMMENTS

ALIGN WITH
TOP OF
DOCUMENTALIGN WITH
TOP OF
DOCUMENT

Aug. 17, 1990

Ky. Public Service Comm.
Attention: Ralph Dennis
P.O. Box 615
Frankfort, Ky. 40602

Bill Nickens
Route 1 Box 237
McKinney, Tx. 75070

Dear Mr. Dennis:

This is a formal request to you and the Commission to investigate the unauthorized and illegal use of my pipeline, located in Cumberland County, Ky., by one Ken Turner, agent of Ken Gas of Ky, Inc. and/or K.E.T., Inc.. HE/they are using approximately five (5) miles of my line and easements to transport natural gas to the city of Burkesville, Ky.

I along with my attorney, Fred Capps of Burkesville, Ky. have advised Mr. Turner by phone and mail to cease use of my line, but so far this has been to no avail, as Mr. Turner has so far ignored our requests and continues to use the line to his benefit and profit.

Mr. Turner has admitted both vocally and by written agreement that he is using this line with out my consent. I have tried to settle this with him in the past on a reasonable basis, however, he has always broken his word on what he says he will do. At this time I feel I have extended every possible effort to maintain the peace.

Hard copies of evidence of this situation will follow by mail.

Sincerely,

Bill Nickens
Bill Nickens

THIS CONTRACT AND AGREEMENT, made and entered into on this the 30th day of June, 1989, by and between WEDCO, INC., of Rickman, Tennessee; BILL NICKENS, d/b/a/ FORT KNOX GAS TRANSMISSION COMPANY, of Garland, Texas, and KEN GAS OF KENTUCKY, INC. and K.E.T, INC., of Albany, Kentucky, herein respectively referred to as WEDCO, NICKENS and KEN GAS,

WITNESSETH:

That for and in consideration of the mutual benefits of the parties to be derived herefrom, it is hereby stipulated by Wedco, Nickens and Ken Gas, as follows:

- 1) Wedco is the owner of approximately 4,000 feet of pipeline easement in Metcalfe County, Kentucky;
- 2) Nickens is the owner of approximately five (5) miles of pipeline and appurtenant easements located in Cumberland County, Kentucky;
- 3) Ken Gas is the owner of the Apache Pipeline and appurtenant easements located in Metcalfe and Cumberland Counties, Kentucky;
- 4) Prior to the date hereof, Ken Gas has made unauthorized use of the Wedco easement and the Nickens line and easements.

NOW, THEREFORE, in order to reduce to writing the mutual agreements of the parties concerning the past use of said lines and easements, and the future use of such easements, it is contracted and agreed as follows:

- 1) Ken Gas and Wedco shall pay to Nickens the sum of Six Thousand Five Hundred Dollars (\$6,500.00), payable as follows:
 - a) \$1,000.00 as of the date hereof;
 - b) \$2,000.00 on or before Monday, July 3, 1989;
 - c) One-third of \$3,500.00 within each sixty day period thereafter, until the sum of \$3,500.00 is paid in full.

2) The above payment of \$6,500.00 is in full satisfaction of Ken Gas's use of the Nickens line prior to the date hereof.

3) Ken Gas shall have free use of the line and shall bear all costs and expenses of operation and maintenance of said line until Midnight, December 31, 1989.

4) Ken Gas and Wedco shall, within a reasonable time from the date hereof, enter into a binding Contract which shall provide for the exclusive use by Ken Gas and Wedco of the Apache line, Nickens line and the Metcalfe County easements for the mutual benefit of those parties; that Wedco shall, pursuant to said Contract, have the right to use the said line for the purpose of transporting its gas to the full capacity of said line over and above that capacity required Ken Gas for the use of its franchises.

5) This Contract, the terms and provisions and effects thereof, shall be contingent upon the execution of the aforementioned Contract by and between Wedco and Ken Gas, and in the event such Contract cannot be made, executed and consummated within a reasonable period of time from the date hereof, this Agreement shall be NULL AND VOID, and the parties returned to their status as of the day and time prior to the date hereof, and any monies paid hereunder by Ken Gas and Wedco to Nickens shall be retained by Nickens and considered to be sums of liquidated damages to be applied toward any monetary claims or damages asserted by Nickens prior to the date hereof.

6) If on January 1, 1990, or any time thereafter that Nickens is still the owner of the Nickens line, Ken Gas shall pay to Nickens the sum of thirty-three cents (33¢) per MCF per day.

This Agreement shall be binding upon the parties hereto, their heirs, Administrator, Executors, successors and assigns.

KEN GAS Companies



KEN GAS of ALBANY
RT. 3 BOX 68
ALBANY, KY. 42602
(606) 387-6142

KEN GAS of BURKESVILLE
P.O. BOX 629
BURKESVILLE, KY. 42717
(502) 864-5314

KEN GAS of BYRDSTOWN
P.O. BOX 376
BYRDSTOWN, TN. 38549
(615) 864-3429

KEN GAS of MONTICELLO
RT. 5, BOX 193F
MONTICELLO, KY. 42633
(606) 348-6261

July 25, 1990

RECEIVED

JUL 31 1990

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

Mr. Ralph E. Dennis
Manager, Gas Branch
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, Kentucky 40602

Dear Mr. Dennis:

This letter is our written response to your letter of July 12, 1990, regarding the so-called "Nickens Line" and allegations made by Bill Nickens.

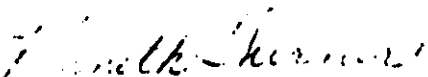
Our attorney David Cross arranged the meeting in Burkesville, Kentucky, with Bill Nickens, Richard Williams (Wedco) and myself in June, 1989. Please, understand, up front this meeting took place to satisfy the needs of other people not just Ken-Gas. For example, Wedco (Richard Williams) had obtained some easements (2) that our attorney should have perfected earlier. Wedco (Richard Williams) continued to represent his ownership of the K.E.T., Inc. line and Wedco promised to establish several feeder lines that would tie into the Apache line.

The following information will be a response to each item in your letter and in the same numerical order.

1. Everybody was going to help each other and have a successful project. I'm the only one spending any money. The purpose of the meeting, as I see it, was for Nickens and Williams to make some money and make promises that have not been satisfied.

2. Agreement dated June 30, 1989. (see attached)
3. Oral permission was granted to Ken-Gas to tie on to said "Nickens line" by Wedco (Richard Williams) and Walton Haddix. Ken-Gas tried to contact Bill Nickens several times by phone, but was unable to do so.
4. the agreement is null and void since Ken-Gas and Wedco did not enter into any binding contract. (see page 2 of attached agreement items 4 and 5)
5. None, other than the enclosed agreement.

Sincerely,



KENNETH TURNER, President
Ken-Gas of Kentucky, Inc.

enclosures

KT/btm



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 613
FRANKFORT, KY. 40602
(502) 564-3940

July 12, 1990

Mr. Kenneth Turner
Ken-Gas of Kentucky
P. O. Box 629
Burkeville, Kentucky 42717

Dear Mr. Turner:

On July 2, 1990, I received a telephone call from Bill Nickens who requested assistance from the Commission regarding Ken-Gas's alleged failure to pay transportation costs for gas which Ken-Gas has transported through a pipeline owned by Mr. Nickens. Based upon information from Mr. Nickens, the pipeline in question is the so-called "Nickens line" to which you referred in information submitted to the Commission on February 2, 1989 (attached). You also referred to the Nickens line in your meeting with Commission Staff on April 17, 1990 concerning Ken-Gas's prospective contract with Centran Corporation.

According to Mr. Nickens, he met with you in 1989 at which time an agreement was signed by you in which it is acknowledged that Ken-Gas tapped into the Nickens pipeline without approval. In this agreement you also agreed that \$6,500 was owed by Ken-Gas for the period of time in which transportation of gas through Mr. Nickens' pipeline had occurred. Mr. Nickens stated that you paid \$3,000 at that meeting and agreed to pay the balance. He further said that Ken-Gas has paid no transportation costs for gas transported through his pipeline since the date of that meeting.

No later than July 25, 1990 you should provide a response to the allegations which Mr. Nickens has made and submit the following information:

1. A summary of the discussion which took place between Ken-Gas and Mr. Nickens at the 1989 meeting he mentioned, including the date and purpose of the meeting.
2. A copy of the agreement which Ken-Gas signed at the 1989 meeting.
3. A description of the efforts made by Ken-Gas, prior to initiating service to Burkeville, to discuss with Mr. Nickens the proposed tap by Ken-Gas on the Nickens pipeline.

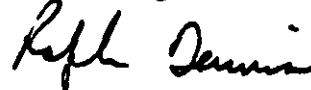
Mr. Kenneth Turner
Page 2
July 12, 1990

4. The amount of money which Ken-Gas presently owes to Mr. Nickens.

5. Copies of any correspondence between Ken-Gas and Mr. Nickens or Kenneth Turner and Mr. Nickens.

Please contact me if you have any questions.

Sincerely,



Ralph E. Dennis
Manager, Gas Branch

RED/ml1

Attachment

KENTUCKY ENERGY TRANSMISSION, INC.

MAIN OFFICE: ROUTE 3, BOX 26A, ALBANY, KY. 42602



August 31, 1990

RECEIVED

SEP 04 1990

DIVISION OF ENERGY
ENGINEERING & MINES

Mr. Ralph E. Dennis
 Manager, Gas Branch
 Public Service Commission
 730 Schenkel Lane
 P.O. Box 615
 Frankfort, Kentucky 40602

Dear Mr. Dennis:

This will respond to your letter of August 3, 1990, and our response is in the same numerical format. The information is as follows:

1.a Ken-Gas of Kentucky, Inc. and Wedco has not entered into any contract regarding the use of the Apache line. Wedco has tried unsuccessfully to obtain rights to the Apache line and their promises of mutual benefit has no merit or warrant any future considerations. The easements referred to are owned and maintained by K.E.T., Inc. and K.E.T., Inc. orally agreed to pay Bill Nickens (33 cents) per Mcf when the pipeline was operating on a profitable basis. Wedco and Bill Nickens have tried to gain economic advantage through misleading information about natural gas wells available to the gathering systems that could be utilized by the Apache line. Due to the situation we have endured and the money expended to date, we acknowledge no unauthorized use of said gathering system or transportation system.

1.b We have been advised by our Attorney and we believe that Bill Nickens and Wedco does not own, nor do they control any easements critical to the operation of the K.E.T., Inc. gathering system.

2. You have a copy of this system and K.E.T., Inc. owns these easements. Wedco owns none of these easements.

3. No, K.E.T., Inc. owns this equipment.

4. Approximately \$10,000 dollars. This relates to misleading information about their ability to help us if we would pay expenses and up front cost they had incurred in a gathering system to utilize gas wells.

5. Same as 4 above.

6.a You have this information in your office which shows the gathering system and line to Burkesville with the identified property owners.

6.b Some are delinquent.

6.c No. They will be paid current soon as the system is profitable.

6.d No.

7. Yes

7.a Some are delinquent.

7.b Nobody to our knowledge.

8. No

9. No

10. None

11. Not to us at K.E.T., Inc., because they have not followed through on anything they have promised us. They, primarily Wedco, continues to communicate to some people in the gas community that they own the Apache line.

12. Our purchase price was approximately \$100,000.

12.a K.E.T., Inc. owns all of the Apache line.

12.b N/A

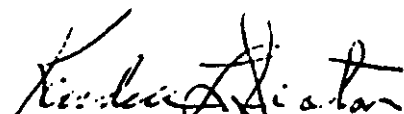
12.c Kentucky-Mississippi Oil & Gas. As far as we know.

13. None

14. Yes, working capital, debt payment, refinancing.

Please contact us if you need additional information.

Sincerely,



KENZELL L. SEATON for
KENNETH TURNER

Kentucky Energy Transmission, Inc.



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY 40602
(502) 564-1940

August 3, 1990

Mr. Ken Turner
Ken-Gas of Kentucky, Inc.
P. O. Box 629
Burkesville, Kentucky 42717

Dear Mr. Turner:

Thank you for your recent response to allegations raised by Bill Nickens regarding the "Nickens line." As of this date, Mr. Nickens has had no additional contact with Commission Staff. However, based upon the information you submitted and other information recently presented to Staff, additional clarification is requested on certain statements made in the agreement you submitted, and the status of the relationship between Ken-Gas, Wedco, and Bill Nickens.

Please provide the following information no later than August 13, 1990:

1. In the copy of the agreement you submitted, Ken-Gas acknowledges that prior to June 30, 1989 Ken-Gas made unauthorized use of the Wedco easement and the Nickens line and easements.

a. Since Ken-Gas is currently receiving gas through pipeline to which the Wedco and Nickens easements pertain, do you still acknowledge that such unauthorized use continues? If not, why?

b. Doesn't the existence of Wedco's and Mr. Nickens' easements on the pipelines through which Ken-Gas supplies gas to Burkesville place Ken-Gas in a potential situation whereby its gas supply could be interrupted? If not, why?

2. Provide a map or drawing which depicts the portions of the Apache pipeline for which Wedco and Ken-Gas have easements.

3. Does Wedco own the metering equipment and related facilities at the point where the Apache line taps into Texas Eastern? If not, who?

4. What financial or other obligations has Ken-Gas incurred, and to whom, as a result of the Wedco easements and the Nickens line and easements?

Mr. Ken Turner
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August 3, 1990

5. Have any payments for any reason ever been made by Ken-Gas to Wedco or Mr. Nickens? If so, when and for what purpose?

6. Has Ken-Gas entered into any financial or other obligations with landowners regarding easements for the Apache line? If yes:

a. Provide copies of the easements, including the name of the landowners and the financial or other obligation incurred.

b. What is the current status of these easements?

c. Is Ken-Gas current in its obligations for each easement?

d. Since the date these easements were agreed upon, have any of the landowners threatened or actually filed suit alleging Ken-Gas's failure to comply with the terms of the easement? If yes, when and how was it resolved?

7. Does Ken-Gas have easements for the remaining portion of the transmission pipeline which connects the Burkesville distribution system with the Texas Eastern interstate pipeline?

a. If yes, what is the current status of the easements? Is Ken-Gas current in its obligations?

b. If no, who else has easements and for what portion of the pipeline?

8. Since June 30, 1989 has Ken-Gas entered into any financial or other agreements with Wedco or Mr. Nickens? If yes, please describe.

9. Is any party other than Ken-Gas using the Apache line in any manner? If yes, who and for what purpose?

10. Describe what contact Ken-Gas has had with Wedco or Mr. Nickens since June 1989.

11. Does Wedco or Mr. Nickens continue to claim that Ken-Gas is making unauthorized use of the Wedco easements and the Nickens line and easements?

12. In November 1987, Ken-Gas represented to Commission Staff that the Apache line had been constructed by the original owners for \$2 million and that K.E.T. purchased part ownership of the Apache line for \$150,000. In exchange, Wedco would assist Ken Turner in other matters.

Mr. Ken Turner
Page 2
August 3, 1990

a. Does Ken-Gas own all, none, or part of the Apache line?

b. If only part or none, who else owns the pipeline and what portion (%) do they own?

c. Who were the original owners? Were these the people who constructed the pipeline?

13. Has Ken-Gas requested any additional financing for the Burkesville gas system since CN 9586 and CN 9987? If yes, provide complete details.

14. Does Ken-Gas anticipate the need for additional financing within the next 12 months for operation of the Burkesville gas system? If yes, why?

Please contact me if you have any questions.

Sincerely,



Ralph E. Dennis
Manager, Gas Branch

RED/ml1